



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 262, 264, 265 and 267

[EPA-HQ-OLEM-2016-0492; FRL-9954-26-OLEM]

RIN 2050-AG90

Internet Posting of and Confidentiality Determinations for Hazardous Waste Export and Import Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA is making these changes to improve protection of public health with respect to hazardous wastes by ensuring public accessibility and transparency of export and import documentation. Specifically, the proposed revisions of the existing regulations will require exporters of hazardous waste and receiving facilities recycling or disposing hazardous waste from foreign sources to maintain a single publicly accessible website (“Export/Import Website”) to which documents can be posted regarding the confirmation of receipt and confirmation of completed recovery or disposal of individual hazardous waste import and export shipments. These proposed changes will improve information on the movement and disposition of hazardous wastes, and will enable interested members of the community and the government to benefit from the provision of publicly accessible data to better monitor proper compliance with EPA’s hazardous waste regulations and help ensure that hazardous waste import and export shipments are properly received and managed. The proposed internet posting requirements are planned for the interim period prior to

the electronic import-export reporting compliance date when electronic submittal to EPA of confirmations of receipt and completed recovery or disposal for hazardous waste shipments will be required. EPA also proposes a confidentiality determination to exclude documents related to the export, import, and transit of hazardous waste and export of excluded CRTs from confidential business information (CBI) claims.

DATES: Comments must be received on or before [**insert date 60 days after date of publication in the Federal Register**]. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before [**insert date 30 after date of publication in the Federal Register**].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2016-0492 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

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I. GENERAL INFORMATION

A. List of acronyms used in this action

<u>Acronym</u>	<u>Meaning</u>
AES	Automated Export System
AOC	Acknowledgment of Consent (issued by EPA)
CBI	Confidential Business Information
CEC	Commission for Environmental Cooperation
CFR	Code of Federal Regulations

CRT	Cathode Ray Tube
EPA	United States Environmental Protection Agency
FR	Federal Register
HSWA	Hazardous and Solid Waste Amendments
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
OIG	EPA's Office of Inspector General
OMB	Office of Management and Budget
RCRA	Resource Conservation and Recovery Act
SIC	Standard Industrial Classification
SLAB	Spent Lead-Acid Battery
WIETS	EPA's Waste Import Export Tracking System

B. What are the statutory authorities for this proposed rule?

EPA's authority to promulgate this rule is found in sections 1002, 2002(a), 3001-3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 et. seq., 6905, 6912, 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

C. Does this action apply to me?

The internet posting requirements in this action generally affect two (2) groups: (1) all persons who export (or arrange for the export) of hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards for (a) universal waste for recycling or disposal, (b) spent lead-acid batteries (SLABs) being shipped for reclamation, (c) industrial ethyl alcohol being shipped for reclamation, (d) hazardous waste

samples of more than 25 kilograms being shipped for waste characterization or treatability studies, and (e) hazardous recyclable materials being shipped for precious metal recovery; and (2) all recycling and disposal facilities who receive imports of such hazardous wastes for recycling or disposal. The application of these confidentiality determinations to certain export, import, and transit documents affects the groups described previously in addition to exporters of cathode ray tubes (CRTs). Potentially affected entities may include, but are not limited to:

NAICS CODE	NAICS DESCRIPTION
211	Oil and Gas Extraction
324	Petroleum and Coal Products Manufacturing
325	Chemical Manufacturing
326	Plastics and Rubber Products Manufacturing
327	Nonmetallic Mineral Product Manufacturing
331	Primary Metal Manufacturing
332	Fabricated Metal Product Manufacturing
333	Machinery Manufacturing
334	Computer and Electronic Product Manufacturing
335	Electrical Equipment, Appliance, and Component Manufacturing
336	Transportation Equipment Manufacturing
339	Miscellaneous Manufacturing
423	Merchant Wholesalers, Durable Goods
424	Merchant Wholesalers, Nondurable Goods
522	Credit Intermediation and Related Activities
525	Funds, Trusts, and Other Financial Vehicles
531	Real Estate
541	Professional, Scientific, and Technical Services
561	Administrative and Support Services
562	Waste Management and Remediation Services
721	Accommodation
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations
211	Oil and Gas Extraction
324	Petroleum and Coal Products Manufacturing

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed

in the table could also be regulated. If you have questions regarding the applicability of this proposed rule to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

D. What is the purpose of this proposed rule?

This rule proposes two types of amendments. First, EPA is proposing certain amendments to the current RCRA regulations in part 262 governing exports and imports of hazardous waste in order to improve protection of public health and the environment by strengthening the public accessibility and transparency of documentation to better monitor proper compliance with EPA's hazardous waste regulations and help ensure that hazardous waste shipments are properly received and disposed. To achieve these goals, EPA is proposing to require internet posting of *confirmation of receipt* and *confirmation of recovery or disposal* documents (i.e., two documents per import shipment and two documents per export shipment) where they are required for individual export and import shipments of hazardous wastes, prior to the electronic import-export reporting compliance date EPA will establish in a separate Federal Register notice. The proposed rule is a companion to EPA's Hazardous Waste Export-Import Revisions Final Rule also published in the "Rules and Regulations" section of this Federal Register, which is one of the Agency's priority actions under its plan for periodic retrospective reviews of existing regulations, as called for by Executive Order 13563. The proposed internet posting requirements are planned to be effective during the interim period prior to the electronic import-export reporting compliance date when electronic submittal to EPA of confirmations of receipt and confirmations of recovery or disposal for hazardous waste shipments will be required.

Second, EPA is also proposing confidentiality determinations with respect to CBI claims for the individual documents and compiled data for the following types of export and import documents, which will hereinafter be referred to as aforementioned “documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs)”:

(1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subpart H, including but not limited to the notifications of intent to export, contracts submitted in response to requests for supplemental information from countries of import or transit, RCRA manifests, annual reports, EPA acknowledgements of consent, any subsequent communication withdrawing a prior consent or objection, responses that neither consent nor object, exception reports, transit notifications, and renotifications;

(2) Documents related to the import of hazardous waste, under 40 CFR part 262, subpart H, including but not limited to contracts and notifications of intent to import hazardous waste into the U.S. from foreign countries or U.S. importers;

(3) Documents related to the confirmation of receipt and confirmation of recovery or disposal of hazardous waste exports and imports, under 40 CFR part 262, subpart H;

(4) Documents related to the transit of hazardous waste, under 40 CFR part 262, subpart H, including notifications from U.S. exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the U.S.;

(5) Documents related to the export of cathode ray tubes (CRTs), under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs;

(6) Documents related to the export of non-crushed spent lead acid batteries (SLABs) with intact casings, under 40 CFR part 266 subpart G, including but not limited to notifications of intent to export SLABs;

(7) Submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste, including but not limited to receiving facility notices of the need to arrange alternate management or return of an import shipment under 40 CFR 264.12(a)(3) and 265.12(a)(3); and

(8) Documents related to the export and import of RCRA universal waste under 40 CFR part 273, subparts B, C, D, and F.

We propose to apply confidentiality determinations such that no CBI claims may be asserted by any person with respect to any of the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs. EPA's determination that revisions to the export/import regulations are needed is bolstered by the concerns and recommendations in both the 2013 Commission for Environmental Cooperation (CEC) report on export and recycling of spent lead-acid batteries (SLABs) within North America ("Hazardous Trade? An Examination of US-generated Spent Lead-acid Battery Exports and Secondary Lead Recycling in Mexico, the United States and Canada") and the 2015 EPA Office of Inspector General (OIG) report on hazardous waste imports ("EPA Does Not Effectively Control or Monitor Imports of Hazardous Waste"). Based on its findings, the CEC report recommended that the U.S. require the use of manifests for each international shipment of SLABs, require exporters to obtain a confirmation of recovery from foreign recycling facilities, explore establishing an electronic export annual report, and better share export and import data between environmental and border agencies. For a more complete discussion of the CEC report and EPA's related analysis, see Section VII of the Hazardous Waste Export-Import Revisions proposed rule (80 FR 63304). The 2015 EPA OIG report recommended that EPA improve the oversight of hazardous waste imports, including tracking of all hazardous waste import

shipments. Copies of the CEC and EPA OIG reports can be found in the Docket for the Hazardous Waste Export-Import Revisions proposed rule (Docket ID No. EPA-HQ-RCRA-2015-0147, documents EPA-HQ-RCRA-2015-0147-0009 and EPA-HQ-RCRA-2015-0147-0011, respectively), and copies have been placed in the docket for this proposed rule.

EPA is particularly interested in input on this proposed action from persons who export hazardous waste or CRTs and those persons who receive imported hazardous waste, including those persons receiving imported or exporting hazardous wastes managed under the special management standards in 40 CFR part 266 (*e.g.*, spent lead acid batteries) and 40 CFR part 273 (*e.g.*, universal waste batteries, universal waste mercury lamps).

E. Brief Description of This Proposal

1. Internet Posting of Confirmations of Receipt and Confirmations of Recovery or Disposal

EPA is proposing to modify the reporting and recordkeeping requirements for exporters of hazardous waste and receiving facilities of hazardous waste imports such that, prior to the electronic import-export reporting compliance date to be established in a future, separate FEDERAL REGISTER notice, they are required to maintain a single publicly accessible website (herein referred to as the “Export/Import Website”) where the following documents will be posted: export confirmations of receipt; export confirmations of recovery or disposal; import confirmations of receipt; and import confirmations of recovery or disposal. EPA is requesting comment on the time period during which exporters and receiving facilities should be required to post these documents to their website and whether such information should continue to be publicly available after the interim period, once EPA receives submittals of such documents electronically.

EPA is proposing that the required documents be posted as read-only, publicly accessible, downloadable images. Examples of acceptable document formats include, but are not limited to, Portable Document Format (PDF), Joint Photographic Experts Group (JPEG), and Graphics Interchange Format (GIF). If a publicly available website is not available, exporters and receiving facilities must develop a publicly accessible website to post the required documents. If a company has more than one physical site from which it exports hazardous waste or receives hazardous waste imports for recycling or disposal, the company must clearly group the posted documents by individual physical facility site. In addition, the documents for each physical site must be clearly organized by the consent number relevant to each export or import shipment. The company's website must be titled "Hazardous Waste Export/Import Rule Compliance Documents." The documents and their respective file names posted to the Export/Import Website must clearly identify the type of document, EPA ID number of the exporting or receiving facility, the consent number associated with the shipment, and the related shipment number (e.g., Shipment No. 1 out of an expected 200 shipments for the consent number). We suggest the following standard nomenclature for file names:

- Exporter confirmation of receipt: EX_Conf_Receipt_[EPA ID No.][Consent No.][Shipment No.]
- Exporter confirmation of recovery or disposal: EX_Conf_Recovery_[EPA ID No.][Consent No.][Shipment No.]
- Receiving facility confirmation of receipt: RF_Conf_Receipt_[EPA ID No.][Consent No.][Shipment No.]
- Receiving facility confirmation of recovery or disposal: RF_Conf_Recovery_[EPA ID No.][Consent No.][Shipment No.]

EPA requests comment on the recommended organizational aspects of the website, and the proposed standard file name format, including whether the proposed standard file name format should be mandatory.

EPA is proposing that the documents posted to the Export/Import Website must be publicly accessible on the website by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal received by the exporter or sent out by the receiving facility related to exports or imports of hazardous waste made during the previous calendar year. Each document must be available for a period of at least three years following the date on which each document was first required to be posted to the website. Furthermore, in accordance with current recordkeeping requirements, paper copies of export and import confirmations of receipt and confirmations of recovery or disposal must be retained by exporters and receiving facilities for a period of at least three (3) years.

2. CBI Claims for Hazardous Waste Export and Import Documents

EPA is also proposing confidentiality determinations and will no longer accept future CBI claims for the individual aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs. Our rationale is explained in the following paragraphs.

To date, our records indicate that EPA has received three assertions of confidentiality, one from Horizon Environment, Inc. in 2004 and two from Johnson Controls Battery Group, Inc. in 2011 and 2012 for certain information contained in hazardous waste export documents. In all three cases, the Agency determined that the information claimed as confidential was not entitled to confidential treatment, as explained in the following paragraphs.

Horizon Environment, Inc. and Johnson Controls Battery Group, Inc. asserted claims of confidentiality for certain hazardous waste export documents that were responsive to a request to EPA under the Freedom of Information Act (FOIA). Horizon's claims related to export notices, and Johnson Controls' claims related to annual reports.

Exemption 4 of the Freedom of Information Act (FOIA) exempts from disclosure "trade secrets and commercial information obtained from a person and privileged or confidential" (see 5 U.S.C. § 552(b)(4)). In order for information to meet the requirements of Exemption 4, EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential (commonly referred to as "Confidential Business Information" (CBI)).

Trade Secret

The two companies' confidentiality claims did not assert that the information was a trade secret, nor did they provide information about how the Agency's release of this information would identify a plan, formula, process, or device. The companies also did not demonstrate how disclosure of the information would identify or reveal a trade secret. Consequently, EPA found that the information did not constitute a trade secret.

Confidential Business Information (CBI)

In order to qualify as CBI under Exemption 4, the information must be "privileged or confidential." Both companies claimed the information to be confidential, but did not claim that the information was privileged. Information that is required to be submitted to the Government is confidential if its "disclosure would be likely either (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." Critical Mass, 975 F.2d at 878

(quoting National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974)) (footnote omitted). In these cases, the Agency had the authority to require the submission of the information and exercised it. Therefore, EPA concluded that the information was a required submission and was not voluntary.

In terms of competitive harm, as set forth in EPA's regulations at 40 CFR 2.208, required business information is entitled to confidential treatment if: The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position. After careful consideration of the arguments submitted by both companies, EPA concluded that neither claim explained specifically how disclosure of the information in the submissions would likely cause substantial competitive harm to the companies, and therefore did not support the claim of competitive harm. Accordingly, EPA concluded that release of this was not likely to cause substantial harm to the companies' competitive positions.

As a result of these analyses, EPA found that the information claimed as confidential was not a trade secret or CBI and, therefore, was not within the scope of Exemption 4 of the FOIA. Based on EPA's analysis and decision in the confidentiality claims asserted by these two companies for their hazardous waste export notices and annual reports, EPA expects to apply a similar analysis and reach a similar decision with respect to these types of documents as well as the other aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs that would be submitted to EPA by other companies. Therefore, EPA proposes to make a confidentiality determination in this rule that all of the aforementioned documents are not confidential.

In addition, EPA has issued an annual Federal Register publication requesting comment from affected businesses (other than original submitters), as defined in 40 CFR 2.201(d), on their

need to assert confidentiality claims for documents and data compiled from such documents submitted by original submitters related to the export, import and transit of RCRA hazardous waste, including those hazardous wastes managed under the special management standards in 40 CFR part 266 (*e.g.*, spent lead acid batteries) and 40 CFR part 273 (*e.g.*, universal waste batteries, universal waste mercury lamps), and related to the export of CRTs under 40 CFR part 261, made during the previous calendar year, prior to EPA considering such documents releasable upon public request. The annual Federal Register publications have not addressed CBI claims likely to be made by the original submitters, since RCRA regulations at 40 CFR 260.2(b) already address the CBI requirements for original submitters. To date, EPA has never received a comment from any business not an original submitter as a result of the annual Federal Register publication.

As discussed previously, EPA's regulations at 40 CFR 2.208 state that, in order for business information to be entitled to confidential treatment, the Agency must have determined that such claims meet several criteria.

EPA believes that the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs do not meet several of the criteria listed in 40 CFR 2.208. Our rationale is explained in the following paragraphs.

EPA believes that any CBI claim that might be asserted with respect to the individual selected hazardous waste documents would be extremely difficult to sustain under the substantive CBI criteria set forth in the Agency's CBI regulations (40 CFR part 2, subpart B). For example, to make a CBI claim, a business must satisfactorily show that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures. The selected hazardous waste documents submitted to the

Agency are also shared with several commercial entities while they are being processed and used. As a result, a business concerned with protecting its commercial information would find it exceedingly difficult to protect its records from disclosure by all the other persons who come into contact with such export, import and transit documents. For example, a business wanting to protect commercial information contained in individual hazardous waste export and import documents would need to enter into and enforce non-disclosure agreements or similar legal mechanisms with all its customers and other third parties and affected interests who might also be named as waste handlers on the documents or who otherwise might be expected to come into contact with its documents.

Furthermore, to substantiate a CBI claim, a business must also show that the information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding). As described previously, the selected hazardous waste documents are shared with several commercial entities throughout the chain of custody of a hazardous waste shipment. Therefore, information contained in these documents is relatively easily accessible to other parties without the business's explicit consent.

For these reasons, EPA believes that any CBI claim that might be asserted with respect to the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs would be difficult to sustain under the substantive CBI criteria (40 CFR part 2, subpart B).

Finally, EPA has established precedent in applying confidentiality determinations to RCRA hazardous waste documents. On February 7, 2014, EPA published the Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic

Manifests final rule which made a categorical determination for individual RCRA hazardous waste manifest records. In EPA's Notice of Data Availability and Request for Comment on the Agency's Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System (73 FR 10204) published on February 26, 2008, EPA concluded that information contained in individual manifested records is essentially public information and therefore is not eligible under federal law for treatment as CBI. The effect of this decision was that EPA made a categorical determination that it will not accept any CBI claims that might be asserted in connection with processing, using, or retaining individual paper or electronic manifests. Because the information contained in RCRA manifests is largely similar to the information contained in individual hazardous waste export and import documents, such as the name, address, and other information about the generator, transporter, and destination or receiving facility, EPA believes that the decision to apply categorical determinations for electronic manifests further supports the proposed confidentiality determination in this action for the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs) and related aggregate information.

Based on our analysis of the CBI criteria in 40 CFR part 2, subpart B, the absence of successful confidentiality claims by the original submitters of information and the lack of assertions of confidentiality submitted by affected businesses other than original submitters in response to the annual Federal Register publication, EPA believes that our proposed confidentiality determination to exclude from CBI claims and release on an annual basis the aforementioned documents is reasonable.

EPA requests comment on our proposed confidentiality determination to prospectively exclude the aforementioned documents related to the export, import, and transit of hazardous

waste and export of excluded CRTs from eligibility for CBI claims. In addition, the Agency believes that these documents do not qualify for the FOIA exemption for personal privacy, and thus the names of company employees or independent contractors that appear in these documents would not be exempt from public release. These documents do not qualify for the personal privacy exemption because the aforementioned documents submitted to the Agency are also shared with several commercial entities while they are being processed and used. As such, such persons whose names appear in these documents have no expectation of privacy. EPA requests public comment on this position.

EPA proposes not to make publicly accessible the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs during the previous calendar year until March 1 of the succeeding year, except as required by applicable federal law, because EPA considers that these documents are still not in final form. Access would be limited while the data are being collected and verified, as data are processed, and exceptions or discrepancies are being resolved. This decision would not impact any CBI claims or any determinations made in the past by EPA in resolving CBI claims related to the export, import, and transit of hazardous waste and export of excluded CRTs.

EPA requests comment on our proposed confidentiality determination that the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs, and data compiled from such documents, would be excluded from CBI claims and made releasable on an annual basis, except as required by applicable federal law. EPA also requests comment on whether requiring that internet posting of confirmations of receipt and confirmations of recovery or disposal by March 1 of each year is an appropriate timeframe for the documents to be considered in final form.

3. Release of Aggregate Data and Competitive Harm Concerns

EPA understands that the waste management industry may be concerned that the aggregation of the data contained in the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs may enable competitors to obtain more immediate and efficient access to customer information, thus potentially creating competitive consequences not previously experienced under the current paper system. Exemption 4 of the Freedom of Information Act (FOIA) exempts from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential” (5 U.S.C. § 552(b)(4)). In order for information to meet the requirements of Exemption 4, EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential (commonly referred to as “Confidential Business Information” (“CBI”)). Since the individual aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs would not be eligible for CBI treatment for the reasons discussed previously, it is a novel issue for EPA whether requests under FOIA for data aggregated from multiple selected records would require special handling by EPA under the FOIA exemption for confidential business information.

Therefore, EPA is seeking public comment on how, if at all, EPA should address any future FOIA requests for aggregate data from the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs. First, EPA needs information on how substantial the harm would be to a company’s competitive position if aggregate data from multiple manifests could be obtained from EPA under a FOIA request. How would this situation differ quantifiably from the current situation where a FOIA request can be made for several of the aforementioned documents related to the export, import, and transit of

hazardous waste and export of excluded CRTs and the requester must then aggregate the relevant data in each of these manifests for himself or herself?

Given our uncertainty about the adverse effects or competitive harm to waste management businesses that would submit hazardous waste export and import documents to EPA, we seek comment on whether the release of aggregated data would adversely impact waste management businesses. In particular, we ask that the waste management industry substantiate their concerns, if any, that the aggregation of manifest data and the subsequent disclosure of that data would somehow release their company's confidential business information and thus cause substantial competitive harm to them.

If EPA were to determine that the waste management industry concerns for the disclosure of aggregate information are legitimate and that they are not sufficiently addressed by the approach described previously in this proposal, then we could develop another approach to mitigate the ability to efficiently create customer lists from aggregated data. We therefore request comment on how EPA should design and implement an approach to protect the disclosure of aggregate data of competitive value, if such an approach were appropriate. For example, what are the indicators of aggregated requests (e.g., requests of 50 or more import, export or transit documents involving a single exporter or importer) that would justify our handling aggregated data differently from individual manifests for FOIA disclosure purposes? What information should be redacted from the data that are released to mitigate any competitive harm from the data disclosure?

If, however, EPA were to determine that the release of aggregate information would not be entitled to confidentiality, EPA would make publicly available such aggregate information in addition to individual documents discussed previously.

The proposed internet posting requirements do not affect the current recordkeeping requirements for retaining paper copies of the export confirmations of receipt, export confirmations of completing recovery or disposal, import confirmations of receipt, and import confirmations of completing recovery or disposal. These paper documents must be retained by exporters and receiving facilities for a period of at least three (3) years.

II. Background

A. RCRA General Hazardous Waste Export and Import Requirements

EPA's hazardous waste export and import regulations were originally promulgated in 1986, and have been revised multiple times. For more information about these requirements and revisions that are being published in this issue of the FEDERAL REGISTER, see "Hazardous Waste Export-Import Revisions Final Rule" found in the "Rules and Regulations" section of this Federal Register.

B. EPA's Transition to Electronic Submittal of Export and Import Documents

Under the newly revised requirements in 40 CFR parts 262, 264 and 265, as amended in EPA's Hazardous Waste Export-Import Revisions Final Rule (found in the "Rules and Regulations" section of this Federal Register), export notices for hazardous waste (40 CFR 262.83(b)) and export notices for CRTs being shipped for recycling (40 CFR 261.39(a)(5)(ii)) are required to be submitted electronically to EPA using EPA's Waste Import Export Tracking System (WIETS) starting on December 31, 2016. Export annual reports for hazardous waste (40 CFR 262.83(g)) and export annual reports for CRTs being shipped for recycling (40 CFR 261.39(a)(5)(xi)) are required to be submitted by paper method prior to one year after a future Automated Export System (AES) filing compliance date to be announced in a future, separate FEDERAL REGISTER notice, and then submitted electronically into EPA's WIETS system

thereafter. The following documents related to hazardous waste exports and imports are required to be submitted to EPA by paper method prior to a future electronic import-export reporting compliance date to be established in a future, second separate FEDERAL REGISTER notice, and then submitted electronically into EPA's WIETS system thereafter:

- Import notices for hazardous waste in cases where country of export does not control as hazardous waste export and EPA has not received notice from country of export (40 CFR 262.84(b));
- Export exception reports for hazardous waste (40 CFR 262.83(h), in lieu of exception reporting required under 40 CFR 262.42);
- Receiving facility notifications of the need to arrange alternate management or the return of an import shipment of hazardous waste (262.84(f)(6), 264.12(a)(4)(ii), 265.12(a)(4)(ii)).

As of the electronic import-export reporting compliance date, per the newly revised requirements in 40 CFR parts 262, 264 and 265, as amended in EPA's Hazardous Waste Export-Import Revisions Final Rule (found in the "Rules and Regulations" section of this Federal Register), the following additional confirmation documents must be submitted electronically to EPA regarding hazardous waste import and export shipments:

- (a) Export confirmations of receipt using movement document (submittal by foreign recovery facility required per contract requirements, 40 CFR 262.83(d)(xv) and 262.83(f)(4));
- (b) Export confirmations of completing recovery or disposal (submittal by foreign recovery facility required per contract requirements, 40 CFR 262.83(f)(5));

(c) Import confirmations of receipt using movement document (40 CFR 262.84(d)(xv), 264.12(a)(2), 264.71(d), 265.12(a)(2), 265.71(d));

(d) Import confirmations of completing recovery or disposal (40 CFR 262.84(g), 264.12(a)(4)(i), 265.12(a)(4)(i)).

To facilitate accessibility and transparency of documentation concerning import and export shipments of hazardous waste that are received and completely recovered or disposed of during the period prior to the electronic import-export reporting compliance date, EPA is proposing that exporters and receiving facilities of hazardous waste maintain a publicly accessible website (“Export/Import Website”) to which the four confirmation documents listed previously in (a), (b), (c), and (d) would be posted. EPA believes that easier access to this information will allow EPA and the public to better monitor exporters’ and importers’ compliance with EPA’s hazardous waste regulations and help verify that hazardous waste shipments are properly received and disposed.

EPA believes the internet is currently the most convenient and widely accessible means for gathering information while the Agency develops electronic submittal capabilities for WIETS. After the electronic import-export reporting compliance date, when EPA’s WIETS is ready to receive these export and import confirmations electronically, exporters and receiving facilities will no longer be required to post these confirmations on their respective company’s website, as the regulations would then require electronic submittal of the export and import shipment confirmations to EPA using WIETS.

1. Why is EPA proposing to require that importers and exporters maintain a website to post hazardous waste export and import documents?

EPA's proposal requires exporters and receiving facilities of hazardous waste to maintain a website to which information can be posted regarding the confirmation of receipt and confirmation of completed recovery or disposal of individual hazardous waste export and import shipments. The website is an appropriate means for ensuring public access to the required information while the Agency develops the electronic submittal capabilities of WIETS. EPA intends for such postings to the exporter or receiving facility's website to be a temporary requirement to be superseded on the electronic import-export reporting compliance date when they will be required to electronically submit the confirmations to WIETS.

2. What are the confirmations of receipt and confirmations of recovery or disposal and how will internet posting of these documents help improve tracking and monitoring of individual hazardous waste shipments?

The confirmation of receipt is a copy of the signed and dated international movement document that must accompany a consented hazardous waste shipment from the starting site in the country of export to the destination site in the country of import. To confirm receipt of the shipment, U.S. exporters must ensure that copies of the signed movement document (i.e., confirmation of receipt) be sent by the foreign destination facility to the exporter and to the countries of export (as of the electronic import-export reporting compliance date), import, and transit that respectively control the shipment as an export, import or transit of hazardous waste. Similarly, U.S. receiving facilities that receive imports of hazardous waste must send copies of the confirmation of receipt to the foreign exporter and to the countries of export, import (as of the electronic import-export reporting compliance date) and transit. The confirmation of receipt reduces the risk of a shipment being misdirected to a country or facility not approved to receive the shipments for disposal or recovery. The confirmation of receipt also highlights any incident

where the shipment is interrupted or misdirected, as the exporter and competent authorities will not receive the confirmation from the approved destination facility within expected timeframes. Lastly, the confirmation of receipt provides documentation for both the exporter and the countries of import and export that the shipment in fact went to the approved recycling or disposal facility.

The confirmation of recovery or disposal documents the completion of final management (i.e., treatment and disposal, recovery) of each hazardous waste export or importshipment. Once received at the approved facility, management (i.e., treatment and disposal, recovery) of each shipment is required to be completed within one year of shipment delivery. For export shipments the U.S. exporter must ensure that the foreign destination facility send confirmation of completing such management back to the exporter and to the countries of export (as of the electronic import-export reporting compliance date), import, and transit that respectively control the shipment as an export or transit of hazardous waste. Similarly for import shipments, a U.S. recycling or disposal facility receiving an import of hazardous waste must send such confirmation back to the exporter and to the countries of export, import (as of the electronic import-export reporting compliance date) and transit. Requiring destination facilities to send such confirmation to the exporter and to the competent authorities of the countries of export and import of the shipment, helps minimize the risk of speculative accumulation or abandonment of the waste shipments, and decreases the potential for associated damage to human health and the environment.

As described previously, the confirmation of receipt and confirmation of recovery or disposal are important requirements that document the receipt and final disposition of individual hazardous waste export and import shipments. With regards to exports, the confirmations are the

only records documenting that hazardous waste shipments are properly received and managed in the foreign country importing the waste. EPA believes that public access to these documents on the websites of exporters and receiving facilities of hazardous waste from foreign sources facilitates the tracking and monitoring compliance of hazardous waste shipments in accordance with EPA's hazardous waste regulations and helps verify that hazardous waste shipments are properly received and disposed.

3. What accommodations will EPA make to allow original submitters of information and affected facilities to protect potential confidential business information (CBI) contained in the documents posted to the Export/Import Website?

As discussed in the previous section, EPA proposes to apply confidentiality determinations to the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs. Based on our analysis of the CBI criteria provided in Section I.E. of this proposed rule, we conclude that the information contained in the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs is essentially public information. Therefore, we propose that no CBI claims may be asserted with respect to any of the aforementioned documents, including hazardous waste export and import confirmations of receipt and confirmations of recovery or disposal.

4. What recordkeeping requirements apply to confirmations of receipt and confirmations of recovery or disposal with this proposed rule?

Each confirmation of receipt and confirmation of recovery or disposal posted to the company websites of hazardous waste exporters and receiving facilities of hazardous waste from foreign sources must be publicly available for a period of at least three years following the date

on which the document was first required to be posted to the website. The proposed internet posting requirements do not affect the current recordkeeping requirements for retaining paper copies of the export confirmations of receipt, export confirmations of completing recovery or disposal, import confirmations of receipt, and import confirmations of completing recovery or disposal. These paper documents must be retained by exporters and receiving facilities for a period of at least three (3) years.

After the electronic import-export reporting compliance date when confirmations will be submitted electronically, the requirement to post these copies and to make them publicly available for three years does not apply. Records of the confirmations must be kept as either paper copies or electronic submittals retained in the exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for reviewing and production if requested by any EPA or authorized state inspector, as stated in the Hazardous Waste Export-Import Revisions rule published in this Federal Register and in § 262.83(i)(2) and § 262.84(h)(3).

III. Summary of This Proposed Rule

A. Changes to 40 CFR 260.2

EPA is proposing a confidentiality determination to exclude hazardous waste export, import, and transit documents and CRT export documents from confidentiality claims.

B. Changes to 40 CFR 262.83 and 262.84

EPA is proposing to modify the reporting and recordkeeping requirements for exporters of hazardous waste and receiving facilities such that, prior to the future electronic import/export reporting compliance date, regulated parties are required to maintain a single, publicly accessible website ("Export/Import Website") containing readable, read-only, publicly accessible,

downloadable images of the following documents: export confirmations of receipt; export confirmations of recovery or disposal; import confirmations of receipt; and import confirmations of recovery or disposal. The exporter's website must be titled "Hazardous Waste Export/Import Regulations Compliance Documents."

Each document posted to the Export/Import Website must be publicly accessible on the website by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal received by the exporter or sent out by the receiving facility during the previous calendar year. Each confirmation must be publicly available for a period of at least three years following the date on which the document was first required to be posted to the website. This requirement to post these copies and to make them publicly available for three years does not apply, however, after the electronic import-export reporting compliance date. The documents must clearly identify the EPA ID number of the exporter or receiving facility, the consent number associated with the shipment, and the shipment number relative to the total number of allowable shipments for the consent number. These documents must be retained by exporters or receiving facilities for a period of at least three (3) years.

C. Changes to 40 CFR 264.74

EPA is proposing to modify the reporting and recordkeeping requirements for the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source such that, prior to the future electronic import-export reporting compliance date, regulated parties will be required to maintain a single, publicly available website containing readable, read-only, publicly accessible, downloadable images of the following documents: import confirmations of receipt and import confirmations of recovery or disposal. The receiving facility's website must be titled "Hazardous Waste Export/Import

Rule Compliance Documents.” Each document posted to the Export/Import Website must be publicly accessible on the website by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be publicly available for a period of at least three years following the date on which the document was first required to be posted to the website. (This requirement to post these copies and to make them publicly available for three years does not apply, however, after the electronic import-export reporting compliance date.) These documents must be retained by the receiving facilities for a period of at least three (3) years.

D. Changes to 40 CFR Part 265.74

EPA is proposing to modify the reporting and recordkeeping requirements for the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source such that, prior to the future electronic import-export reporting compliance date, regulated parties will be required to maintain a single, publicly available website containing readable, read-only, publicly accessible, downloadable images of the following documents: import confirmations of receipt and import confirmations of recovery or disposal documents. The receiving facility’s website must be titled “Hazardous Waste Export/Import Rule Compliance Documents.” Each document posted to the Export/Import Website must be publicly accessible on the website by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be publicly available for a period of at least three years following the date on which the document was first required to be posted to the website. This requirement to post these copies and to make them

publicly available for three years does not apply, however, after the electronic import-export reporting compliance date. These documents must be retained by the receiving facilities for a period of at least three (3) years.

E. Changes to 40 CFR Part 267.71

EPA is proposing to modify the reporting and recordkeeping requirements for the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source such that, prior to the future electronic import-export reporting compliance date, regulated parties will be required to maintain a single, publicly available website containing readable, read-only, publicly accessible, downloadable images of the import confirmations of receipt. The receiving facility's website must be titled "Hazardous Waste Export/Import Rule Compliance Documents." Each document posted to the Export/Import Website must be publicly accessible on the website by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be publicly available for a period of at least three years following the date on which the document was first required to be posted to the website. This requirement to post these copies and to make them publicly available for three years does not apply, however, after the electronic import-export reporting compliance date. These documents must be retained by the receiving facilities for a period of at least three (3) years.

IV. Costs and Benefits of the Proposed Rule

A. Introduction

The Agency's economic assessment conducted in support of this proposed action evaluates costs, cost savings, benefits, and other impacts, such as environmental justice,

children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we developed and implemented a methodology for examining impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts.

B. Analytical Scope

This economic analysis assesses the costs and cost savings of the proposed rule. It estimates the unit costs for each provision of the rule and applies these values to the number of affected entities, and it employs a "model entity" approach to estimate the cost and cost savings associated with the proposed rule, applying average costs by entity type (i.e., exporter, importer, transporter, or recognized trader) and foreign trade partner. The costs (and cost savings) of the proposed rule are estimated over a twenty-year time horizon and using a seven percent discount rate.

The analysis conducted for this proposal is a simple cost assessment. We do not attempt to estimate the social costs and benefits associated with this action. This is consistent with Executive Order 12866, which requires a full Regulatory Impact Analysis only for actions having an estimated impact on society of greater than \$100 million per year.

C. Cost Impacts

Regulated parties will incur costs to familiarize itself with the requirements of the rule and comply with each of the provisions described in the summary of the proposed rule and changes. The most significant costs to industry under the proposed rule are associated with the posting of the required documents to the Export/Import Website until the electronic submittal capabilities of WIETS are fully developed.

As a result of the rule, the annualized costs to regulated parties are estimated to be about \$99,309 if the electronic submittal capabilities of WIETS are developed in 2018 and estimated to be about \$333,993 if the electronic submittal capabilities of WIETS are developed in 2022, using a 7 percent discount rate.

D. Benefits

There are a number of qualitative benefits associated with this proposed rule.

During the interim period, the rule will:

- Achieve greater transparency and public accessibility of export and import documentation;
- Improve the public's ability to acquire information regarding the quantities of U.S. hazardous waste exports and imports;
- Help monitor proper compliance with EPA's hazardous waste regulations and verify that hazardous waste shipments are properly received and disposed.

Due to data availability, EPA could not quantify all the benefits, such as human health benefits from increased compliance with the rule.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271. Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA

authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that State. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized State until the State adopted the federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Because of the federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA

hazardous waste regulations. This approach of having Federal, rather than State, administering of the import/export functions promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries.

Although States do not receive authorization to administer the Federal government's export functions in the previous 40 CFR part 262 subpart E, import functions in the previous 40 CFR part 262 subpart F, import/export functions in the previous or revised 40 CFR part 262 subpart H, or the import/export relation functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt the provisions in this rule to maintain their equivalency with the Federal program (see 40 CFR 271.10(e)).

This proposed rule contains amendments to the revised 40 CFR part 262 subpart H. The rule also contains related amendments to 40 CFR parts 260, 262, 264, 265, and 267, all of which are more stringent.

The States that have already adopted 40 CFR part 262 subparts E, F and H, 40 CFR parts 263, 264, 265, and any other import/export related regulations, and that will be adopting the revisions in the Hazardous Waste Export-Import Revisions Final Rule, published in the "Rules and Regulations" section of this Federal Register, must adopt the revisions to those provisions in this final rule. But only States that have previously adopted the optional CRT conditional exclusion in 40 CFR 261.39, or the optional exclusions for samples in 40 CFR 261.4(d) and (e) are required to adopt the revisions related to those exclusions in this final rule.

When a State adopts the import/export provisions in this rule (if final), they must not replace Federal or international references or terms with State references or terms.

The provisions of this rule, if final, will take effect in all States on the effective date of the rule, since these import and export requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed rule is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis, titled “Regulatory Impact Analysis: Internet Posting and Confidentiality Determinations for Hazardous Waste Export and Import Documents Proposed Rule,” is available in the docket. Interested persons, including those persons currently importing and exporting hazardous waste, are encouraged to read and comment on the accuracy of the assumptions and the burden estimates presented in this document (e.g., for website development, hiring or training of additional staff, including legal counsel or external consultants, to comply with the finalized requirements).

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2557.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized

here.

This action proposes that exporters of hazardous waste and receiving facilities of hazardous waste post read-only, publicly accessible, downloadable images of required documents to a single publicly accessible website to be developed and maintained by each regulated party.

Respondents/affected entities: Recycling and disposal facilities who receive imports of hazardous waste and all persons who export or import (or arrange for the export or import) hazardous waste being shipped for either recycling or disposal, SLABs being shipped for reclamation, industrial ethyl alcohol being shipped for reclamation, and hazardous recyclable materials being shipped for precious metal recovery, and hazardous waste samples of more than 25 kilograms being shipped for waste characterization or treatability studies.

Respondent's obligation to respond: Required per proposed regulations 40 CFR 262.83, 262.84, 264.74, 265.74, and 267.71 under RCRA (42 U.S.C. 6901 et. seq., 6905, 6912, 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974)

Estimated number of respondents: 476

Frequency of response: Yearly

Total estimated burden: 4452 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$0, includes \$0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-

related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than **[insert date 30 days after date of publication in the *Federal Register*]**. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are exporters of hazardous waste and receiving facilities of hazardous waste from foreign sources. The Agency has determined that approximately 22 percent of exporters and approximately 25 percent of facilities receiving hazardous waste from foreign sources, are small entities, generating an average revenue of approximately \$41 million and \$8 million annually. The cumulative average cost of this proposed action will not exceed one percent of annual revenues for any one entity. Details of this analysis are presented in Section 5.2 of "Regulatory Impact Analysis: Internet Posting and Confidentiality Determinations for Hazardous Waste Export and Import Documents Proposed Rule," which is available in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Further, UMRA does not apply to the portions of this action concerning application of OECD import and export procedures because those portions are necessary for the national security or the ratification or implementation of international treaty obligations (i.e., the 1986 OECD Decision-Recommendation and the Amended 2001 OECD Decision).

E. Executive Order 13132: Federalism

This action does not have federalism implications because the state and local governments do not administer the export and import requirements under RCRA. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. No exporters, importers or transporters affected by this action are known to be owned by Tribal governments or located within or adjacent to Tribal lands. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The requirements in this action should prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action is designed to increase the accessibility and transparency of documentation of individual hazardous waste import and export shipments.

K. Executive Order 13659: Streamlining the Export/Import Process for America's Businesses

Executive Order 13659, titled “Streamlining the Export/Import Process for America’s Businesses” (79 FR 10657, February 25, 2014), establishes federal executive policy on improving the technologies, policies, and other controls governing the movement of goods across our national borders. This proposed action strengthens the accessibility and transparency of documentation by requiring public internet posting of confirmation of receipt and confirmation of recovery or disposal of individual export and import shipments of hazardous wastes prior to the future electronic import-export reporting compliance date EPA will establish in a separate Federal Register notice. Thus, this proposed action is consistent with the purpose of Executive Order 13659.

List of Subjects

40 CFR Part 260

Environmental protection, CRTs, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Transits.

40 CFR Part 262

Environmental protection, Hazardous waste, Exports, Imports, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements.

40 CFR Part 267

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements.

Dated: October 28, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-27, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Amend §260.2 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Except as provided under paragraphs (c) and (d) of this section, any person who submits information to EPA in accordance with parts 260 through 266 and 268 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in part 2, Subpart B, of this chapter.

* * * * *

(d)(1) After [final rule effective date], no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) of this chapter, and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82(c), 262.83, 262.84, 264.12(a), 264.71(d), 265.12(a), 265.71(d), and 267.71(d), whether submitted to EPA electronically or in paper format.

(2) EPA will make any cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) of this chapter, and any hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82(c), 262.83, 262.84, 264.12(a), 264.71(d), 265.12(a), 265.71(d), and 267.71(d) of this chapter available to the public under this section when these electronic or paper documents are considered by EPA to be releasable and final. These submitted electronic and paper documents related to hazardous waste exports, imports and transits and cathode ray tube exports are considered by EPA to be public documents and are considered to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits were made.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

3. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C 6906, 6912, 6922-6925, 6937, and 6938.

4. In § 262.83, as amended in a final rule published elsewhere in this issue of the Federal Register and effective December 31, 2016, add paragraph (i)(4) to read as follows:

§ 262.83 Exports of hazardous waste.

* * * * *

(i) * * *

(4) Prior to the electronic import-export reporting compliance date, the exporter must post copies of the export confirmations of receipt and confirmations of recovery or disposal that the exporter receives to the exporter's publicly accessible website (Export/Import Website). The exporter's website must be titled "Hazardous Waste Export/Import Rule Compliance Documents." The posted copies must be clearly readable, read-only, publicly accessible, and

downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal received by the exporter during the previous calendar year. Each confirmation must be maintained on the exporter's website for at least three (3) years from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

5. In § 262.84, as amended in a final rule published elsewhere in this issue of the Federal Register and effective December 31, 2016, add paragraph (h)(5) to read as follows:

§ 262.84.Imports of hazardous waste.

* * * * *

(h) * * *

(5) Prior to the electronic import-export reporting compliance date, the receiving facility must post copies of the import confirmations of receipt and confirmations of recovery or disposal that the receiving facility sends to the foreign exporter to the receiving facility's publicly accessible website (Export/Import Website). The receiving facility's website must be titled "Hazardous Waste Export/Import Rule Compliance Documents." The posted copies must be clearly readable, read-only, publicly accessible, and downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be maintained on the receiving facility's website for at least three (3) years

from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

**PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS
WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

6. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

7. Amend 264.74 by adding paragraph (d) to read as follows:

§264.74 Availability, retention, and disposition of records.

* * * * *

(d) Prior to the electronic import-export reporting compliance date, the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must post copies of the import confirmations of receipt and confirmations of recovery or disposal that the facility sends to the foreign exporter to the facility's publicly accessible website (Export/Import Website). The receiving facility's website must be titled "Hazardous Waste Export/Import Rule Compliance Documents." The posted copies must be clearly readable, read-only, publicly accessible, and downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be maintained on the receiving facility's website for at least three (3) years from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

**PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF
HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

8. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

9. Amend 265.74 by adding paragraph (d) to read as follows:

§265.74 Availability, retention, and disposition of records.

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(d) Prior to the electronic import-export reporting compliance date, the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must post copies of the import confirmations of receipt and confirmations of recovery or disposal that the facility sends to the foreign exporter to the facility's publicly accessible website (Export/Import Website). The receiving facility's website must be titled "Hazardous Waste Export/Import Rule Compliance Documents." The posted copies must be clearly readable, read-only, publicly accessible, and downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be maintained on the receiving facility's website for at least three (3) years from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

**PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS
WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT**

9. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924-6926, and 6930.

10. Amend §267.71 by adding paragraph (e) as follows:

§267.71 Use of the manifest system.

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(e) Prior to the electronic import-export reporting compliance date, the facility that receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must post copies of the import confirmations of receipt and confirmations of recovery or disposal that the facility sends to the foreign exporter to the facility's publicly accessible website (Export/Import Website). The receiving facility's website must be titled "Hazardous Waste Export/Import Rule Compliance Documents." The posted copies must be clearly readable, read-only, publicly accessible, and downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be maintained on the receiving facility's website for at least three (3) years from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

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